

AMENDED IN SENATE JUNE 13, 2001

AMENDED IN ASSEMBLY MAY 1, 2001

AMENDED IN ASSEMBLY APRIL 16, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 1453

**Introduced by Assembly Member Koretz
(Coauthor: Assembly Member Vargas)**

February 23, 2001

An act to add Division 8.7 (commencing with Section 22970) to the Business and Professions Code, relating to tobacco products.

LEGISLATIVE COUNSEL'S DIGEST

AB 1453, as amended, Koretz. Tobacco: display and use limitations.

Existing law provides for the establishment of programs relating to tobacco use prevention.

This bill would prohibit any person, firm, or corporation that displays at one or more retail locations any sign or placard intended to advertise or promote the sale or consumption of any cigarette or tobacco product, from placing the sign or placard at a level that is lower than 3 feet from the floor, and would *either impose a civil penalty for a violation of that provision or subject the person, firm, or corporation to a citation for an infraction, with escalating fines for subsequent violations.*

This bill would also prohibit any person, firm, or corporation from displaying or making available any ashtrays for public use on the premises where smoking is prohibited with specified exceptions, and

would impose *either a civil penalties for violations of this provision penalty or subject the person, firm or corporation to a citation for an infraction with escalating fines for subsequent violations. By creating new infractions, the bill would impose additional duties on local law enforcement agencies, thus creating a state-mandated local program.*

This bill would also prohibit the distribution of free samples of tobacco products by mail to anyone who has not been previously identified as a consumer of tobacco products who is 18 years of age or older and would impose civil penalties for ~~a~~ *each* violation of this provision.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

1 SECTION 1. Division 8.7 (commencing with Section 22970)
2 is added to the Business and Professions Code, to read:

3
4 DIVISION 8.7. CHILDREN'S PROTECTION FROM
5 TOBACCO ACT
6

7 22970. This division shall be known and may be cited as the
8 Children's Protection from Tobacco Act of 2001.

9 22971. (a) Any person, firm, or corporation that displays at
10 one or more retail locations any sign or placard intended to
11 advertise or promote the sale or consumption of any cigarette or
12 tobacco product shall not place the sign or placard at a level that
13 is lower than three feet from the floor.

14 (b) This section shall not apply to the product itself or to signs
15 or placards used in connection with or as part of a product display
16 fixture.

17 ~~(c) The State Department of Health Services shall assess a civil~~
18 ~~penalty for each violation of subdivision (a) according to the~~
19 ~~following schedule:~~

1 ~~(1) A civil penalty of five hundred dollars (\$500) for the first~~
2 ~~violation.~~

3 ~~(2) A civil penalty of seven hundred fifty dollars (\$750) for the~~
4 ~~second violation at the same location within a five-year period.~~

5 ~~(3) A civil penalty of one thousand dollars (\$1,000) for the~~
6 ~~third or subsequent violation at the same location within a~~
7 ~~five-year period.~~

8 *(c) Any person, firm, or corporation who is in violation of*
9 *subdivision (a) shall be subject to either of the following:*

10 *(1) A civil penalty assessed by the State Department of Health*
11 *Services for each violation according to the following schedule:*

12 *(A) A civil penalty of five hundred dollars (\$500) for the first*
13 *violation.*

14 *(B) A civil penalty of seven hundred fifty dollars (\$750) for the*
15 *second violation at the same location within a five-year period.*

16 *(C) A civil penalty of one thousand dollars (\$1,000) for the*
17 *third or subsequent violation at the same location within a*
18 *five-year period.*

19 *(2) A citation issued by local police, sheriff, or code*
20 *enforcement personnel for committing a public offense punishable*
21 *as an infraction by a fine subject to the following schedule:*

22 *(A) For a first offense, punishable by a fine of five hundred*
23 *dollars (\$500).*

24 *(B) For a second offense at the same location within a five-year*
25 *period, punishable by a fine of seven hundred fifty dollars (\$750).*

26 *(C) For a third or subsequent offense at the same location*
27 *within a five-year period, punishable by a fine of one thousand*
28 *dollars (\$1,000).*

29 22972. *(a) Except as provided in subdivisions (b) and (c), no*
30 *person, firm, or corporation shall display or make available*
31 *ashtrays, for public use on the premises where smoking is*
32 *prohibited under existing state law.*

33 *(b) Notwithstanding subdivision (a), a receptacle for*
34 *tobacco-related waste may be placed within five feet of a door*
35 *available for public entry onto the premises.*

36 *(c) Notwithstanding subdivision (a), ashtrays, may be sold or*
37 *distributed to the public on premises where smoking is prohibited*
38 *but only for use in areas where smoking is not prohibited.*

~~(d) The State Department of Health Services shall assess the civil penalty for each violation of subdivision (a) according to the following schedule:~~

~~(1) A civil penalty of two hundred fifty dollars (\$250) for the first violation.~~

~~(2) A civil penalty of five hundred dollars (\$500) for the second violation at the same location within a five-year period.~~

~~(3) A civil penalty of one thousand dollars (\$1,000) for the third and subsequent violation at the same location within a five-year period.~~

(d) Any person, firm, or corporation who is in violation of subdivision (a) shall be subject to either of the following:

(1) A civil penalty assessed by the State Department of Health Services for each violation according to the following schedule:

(A) A civil penalty of two hundred fifty dollars (\$250) for the first violation.

(B) A civil penalty of five hundred dollars (\$500) for the second violation at the same location within a five-year period.

(C) A civil penalty of one thousand dollars (\$1,000) for the third or subsequent violation at the same location within a five-year period.

(2) A citation by local police, sheriff, or code enforcement personnel for committing a public offense punishable as an infraction by a fine subject to the following schedule:

(A) For a first offense, punishable by a fine of two hundred fifty dollars (\$250).

(B) For a second offense at the same location within a five-year period, punishable by a fine of five hundred dollars (\$500).

(C) For a third or subsequent offense at the same location within a five-year period, punishable by a fine of one thousand dollars (\$1,000).

22973. (a) No person, firm, or corporation shall provide free samples of any tobacco product by mail to anyone who has not been previously identified as a consumer of tobacco products who is 18 years of age or older.

~~(b) The State Department of Health Services shall assess the civil penalty for each violation of subdivision (a) according to the following schedule:~~

~~(1) A civil penalty of two hundred fifty dollars (\$250) for the first violation.~~

1 ~~(2) A civil penalty of five hundred dollars (\$500) for the second~~
2 ~~violation at the same location within a five-year period.~~

3 ~~(3) A civil penalty of one thousand dollars (\$1,000) for the~~
4 ~~third and subsequent violation at the same location within a~~
5 ~~five-year period.~~

6 *(b) Each mailing of a tobacco product to any person who has*
7 *not been previously identified as a consumer of tobacco products*
8 *who is 18 years of age or older shall constitute a separate violation*
9 *of subdivision (a) and shall be subject to the civil penalty as*
10 *provided in subdivision (c).*

11 *(c) The State Department of Health Services shall assess a civil*
12 *penalty of two hundred fifty dollars (\$250) for each separate*
13 *violation of subdivision (a).*

14 22974. (a) This division shall not preempt or otherwise
15 prohibit the adoption of a local standard that imposes greater
16 restrictions on the promotion of, use or access to tobacco products
17 than the restrictions imposed by this division.

18 (b) To the extent that there is an inconsistency between this
19 section and a local standard that imposes greater restrictions on the
20 promotion of, or the use or access to, tobacco products, the greater
21 restriction on the promotion of, or, use or access to tobacco
22 products in the local standard shall prevail.

23 *SEC. 2. No reimbursement is required by this act pursuant to*
24 *Section 6 of Article XIII B of the California Constitution because*
25 *the only costs that may be incurred by a local agency or school*
26 *district will be incurred because this act creates a new crime or*
27 *infraction, eliminates a crime or infraction, or changes the penalty*
28 *for a crime or infraction, within the meaning of Section 17556 of*
29 *the Government Code, or changes the definition of a crime within*
30 *the meaning of Section 6 of Article XIII B of the California*
31 *Constitution.*